

## DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-17 and 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 334 688 or Lucas (3,871,574) in view of Lautenschlager (5,447,077) or Guy et al (5,084,133).

The above references are applied for the same combined reasons as set forth at the last paragraph, page 5 through page 6 and page 7, lines 1-11 of the previous Office Action.

Claims 6 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed December 7, 2011 have been fully considered but they are not persuasive.

Applicant's arguments such as: the "means for sealing the vaporising receptacle to the apparatus to maintain the reduced pressure,".... such a feature is absent from the disclosure of GB '688....Lucas, as shown in figure 1 and described in column 2, the "container" which the Examiner has equated to the "receptacle" of present claim 1 is contained within a "hermetically-sealable vacuum chamber" made up from the base section 10b and the cover section 10a. Accordingly, the container of Lucas is not, in

itself, sealed to the apparatus in order to maintain the reduced pressure. The only seal disclosed in Lucas is that of the vacuum chamber itself. In contrast, claim 1 recites a "means for sealing the vaporising receptacle to the apparatus to maintain the reduced pressure ....The Examiner has completely omitted an element of the claim feature which is absent from Lucas..." are not persuasive of patentability because of the following reasons:

The argued "hermetically-sealable vacuum chamber" provided in Lucas tells an artisan that the vacuum chamber must necessarily be maintaining vacuum or reduced pressure in the container contained therein; and must necessarily be providing the sealing means to said container relative to other component in the apparatus. It is noteworthy that the container is rotated at high speed and therefore would be air and/or vacuum tight .

This is evident from GB 688 disclosure at page 4 stating that "The spinning samples are held in a **vacuum-tight chamber** (referred to henceforth as "chamber") which is connected to a vacuum pumping device". The test of obviousness should not be limited to the specific structure shown by the references, but should be into the concepts fairly contained therein, and whether those concepts would suggest to one skilled in the art the modifications called for by the claims.." In re Bozek, 163 USPQ 545; In re Beckum, 169 USPQ 47 . The concept of providing a "**hermetically-sealable** vacuum chamber for its art -recognized function is known in the art. Moreover, and contrary to applicant's assertion, an element of the claim feature is not completely omitted as the argued vaporizing receptacle for one is not even part of the apparatus, and therefore cannot be distinguished from the prior art in the structural sense. This is admitted by applicant.

Applicant stipulates that "By the language of claim 1, even though the apparatus concentrates solutions in a vaporising receptacle, it does not comprise the **vaporising receptacle which is not a positively claimed element**. Emphasis above added.

Furthermore, applicant's arguments regarding Guy's disclosure of **heating the gas** before it is introduced into the enclosure; and Lautenschlager's air or gas added to the heating chamber 3 are not considered well-taken as they are deemed to read on the broadly claimed "hot air heater". The fact that the gas or air in the above references are heated would presuppose of the presence of an air heater. The further argued "arranged to direct hot air flow" is of no patentable moment. The manner or method in which an apparatus is to be used is not germane to the issue of patentability of the apparatus itself. That is, the claim language relied upon by applicant to distinguish over Guy or

Lautenschlager is a functional language. **While it is true that a "functional limitation" may properly limit an apparatus claim, as argued, however, it is the structure which is given patentable weight in an apparatus claim.** Guy or Lautenschlager's apparatus possesses the capability of performing the recited function. Moreover, the argument that there is " no motivation to the ordinary artisan to combine an apparatus that requires vacuum maintenance (GB '688 and Lucas) with one that introduces gas or air (Lautenschlager and Guy) to arrive at the invention of claim 1 is not understood. Giving claim 1 its broadest reasonable interpretation, the above argued combination of an apparatus that requires vacuum maintenance with one that introduces gas or air would read on the "vacuum pump to reduce the pressure within the vaporising

receptacle...and a hot air heater arranged to direct hot air flow onto the receptacle" claimed in claim 1. The additional features e.g., of Lautenschlager such as the argued, interalia, the microwaves for heating although not required by the claims, are not excluded therefrom.

Absolute predictability is not a prerequisite for obviousness rejection. All that is required to show obviousness is that the applicant make his claimed invention merely by applying, knowledge clearly present in the prior art. Section 103 requires us to presume full knowledge by the inventor of the prior art in the field of his endeavor. See *In re Winslow*, 53 CCPA 1574, 1578, 365 F.2d 1017, 1020, 151 USPQ 48, 50-51 (1966). No commercial success is claimed, nor is any other factor indicating non-obviousness is seen to exists.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Harcourt discloses used of a fluid tight seals for rotatable shafts.

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**This application contains claims 29 and 32-52 drawn to an invention nonelected without traverse in the reply filed on June 16, 2011. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIRGINIA MANOHARAN whose telephone number is (571)272-1450.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Smith Duane, can be reached on 571-272-1166.

The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Virginia Manoharan/  
Primary Examiner, Art Unit 1776

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